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प्राधिकार से प्रकाशित
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सं. 18] नई दिल्ली, सितम्बर 11—सितम्बर 17, 2022, शनिवार/भाद्र 20—भाद्र 26, 1944
No. 18] NEW DELHI, SEPTEMBER 11—SEPTEMBER 17, 2022, SATURDAY/BHADRA 20—BHADRA 26, 1944

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्यक्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए साधारण आदेश और अधिसूचनाएं
Orders and Notifications issued by the Central Authorities (Other than the Administrations of Union Territories)

भारत निर्वाचन आयोग आदेश

नई दिल्ली, 9 सितम्बर, 2022

आ.अ. 136.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग एतद्वारा वर्ष 2019 की निर्वाचन याचिका संख्या 3 में बम्बई उच्च न्यायालय, नागपुर बेंच, नागपुर के निर्णय/आदेश दिनांक 20/08/2021 को प्रकाशित करता है।

(यहां निर्णय/आदेश मुद्रित करें)

[फा. सं. 82/महा.-लो.स./3/2019 (नागपुर)]

आदेश से,
एस. के. दास, सचिव

**ELECTION COMMISSION OF INDIA
ORDER**

New Delhi, the 9th September, 2022

O.N. 136.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission of India hereby publishes the judgment/order dated 20/08/2021 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Election Petition No. 3 of 2019.

(HERE PRINT THE JUDGMENT/ORDER)

[F. No. 82/MT-HP/3/2019 (Nagpur)]

By Order

S. K. DAS, Secy.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH AT NAGPUR
ELECTION PETITION NO.3/2019**

Dhnraj s/o Kothiramji Vanjari,
aged 63 years, retd. Govt. Servant,
r/o c/o Ramkrishna Sambhare,
New State Bank Colony, Luniya Layout,
Nagpur Road, Wardha.

...PETITIONER

VERSUS

1. The Election Commission of India,
through its Chairman having o/a
Nirvachan Bhavan, Ashoka Bhavan,
New Delhi.
2. Returning Officer, having his
office at Collectorate, Wardha.
3. Ramadas s/o Chandrabhan Tadas,
r/o Main Road, Deoli, District
Wardha – 442 101

...RESPONDENTS

Mr. Nihalsingh Rathod, Advocate for petitioner.

Ms Neerja Choubey, Advocate for respondent No.1.

Mrs. K.R. Joshi, Incharge Government Pleader for respondent No. 2.

Mr. F. T. Mirza, Advocate for respondent No.3.

CORAM:- V. M. DESHPANDE J.

DATE:- AUGUST 20, 2021

JUDGMENT (Per: V. M. Deshpande, J.)

1. After elections for 17th Lok Sabha were held in April- 2019, various election petitions were filed in the High Court.

2. The preset election petition pertains to Lok Sabha election for Wardha Constituency. The petitioner was sponsored by duly registered political party by name; 'Vanchit Bahujan Aghadi.' In the said election, respondent no.3, who was sponsored by Bhartiya Janata Party was declared as returned candidate by the Returning Officer. According to the election petitioner, he polled 36452 votes whereas respondent no.3 polled 5,78,364 votes. Paragraphs 5 and 6 of the petition, which are relevant, read thus:

"5. In the loksabha constituency of Wardha Loksabha 08, there were 17,41,700 registered voters. Of which 10,71,190 polled their votes. Petitioner, according to the respondent no.2 fared 36452 votes, whereas the respondent no.3 sponsored by Bhartiya Janata Party fared 5,78,464 votes. However, the final tally of the votes does not match and there is serious discrepancy in the grant total. From bare perusal of the data as recorded in handwritten form in form 17 and that counted there is difference of 1380 votes.

6. *In such circumstances, it was mandatory for the respondent no.2 to match the tally between the votes recorded in accordance with form 17C and votes counted. Only after such tally matches without any error, could the respondent no.2 have proceeded further. However, without following the specific orders of respondent no.1, respondent no.2 issued certificate to the respondent no.3, leaving behind serious lacunae which makes the whole election redundant and vitiated."*

3. After notices were issued, respondent no.3 appeared and filed an application under Order VII Rule 11 (a) of the Code of Civil Procedure, 1908 read with Section 81 and 83 (1) (a) of the Representation of People Act, 1951 for rejection of this petition. The said application was Civil Application (CAO) No.1842/2019 (Exh.-7). Copy of the said was furnished to the counsel for the petitioner. Roznama of this election petition would show that in spite of time granted, reply was not filed to the application Exh.-7. On 16.07.2021, Mr. Rathod, learned counsel for election petitioner submitted that he was having instructions from the election petitioner that election petitioner does not wish to file any reply to the application, Exh.-7 and accordingly the said was noted in the order dated 16.07.2021 and thereafter the matter was fixed for oral arguments.

4. When on 20.08.2021, the application was taken up for hearing, it was pointed out to this Court, not only by the learned counsel for respondent no.3 but also by learned counsel for the election petitioner that Election Petition Nos.6/2019, 9/2019 and 7/2019 are dismissed by different benches of this Court by allowing applications filed on behalf of the returned candidate under Order 7 Rule 11(a) of the Code of Civil Procedure and Sections 81 and 83 (1) (a) of the Representation of People Act.

5. At the time of hearing of this application, Mr. Rathod, learned counsel for the petitioner submitted that except the number of votes as mentioned in paragraphs 5 and 6 of the election petitions, which were filed by him only, all other pleadings made in all election petitions are identical.

6. Mr. Rathod, learned counsel for the election petitioner also submitted that none of the election petitioners whose election petitions have been dismissed by various benches of this Court by upholding the objections raised by filing application under Order VII Rule 11(a) of the Code of Civil Procedure, none approached before the Hon'ble Apex Court. Mr. Rathod further submitted that the allegations made in this petition since are identical with the other petitions except the votes polled by the petitioner and the returned candidates, he submitted that this election petition also can be disposed of.

7. From the submissions made by both the parties before me, it appears that facts constituting cause of action as contemplated by sub clause (a) of Order VII Rule 11(a) of the Code of Civil Procedure are same. It is undisputed that all other election petitions have been dismissed for non disclosure of cause of action. Therefore, I found myself bound by the reasons, dismissing those other election petitions.

8. In that view of the matter, there is no other option for this Court but to allow application Exh.-7. Consequently, following order is passed.

ORDER

- (i) Civil Application (CAO) No.1842/2019, under Order VII Rule 11(a) of the Code of Civil Procedure read with Section 81 and 83 (1) (a) of the Representation of People Act (Exh.-7) filed by the returned candidate is hereby allowed.
- (ii) In view of allowing of application Exh.-7, Election Petition No.3/2019 stands dismissed.

JUDGE

Kahale

आदेश

नई दिल्ली, 9 सितम्बर, 2022

आ.अ. 137.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग एतद्वारा वर्ष 2019 की निर्वाचन याचिका संख्या 4 में बम्बई उच्च न्यायालय, नागपुर बेंच, नागपुर के निर्णय/आदेश दिनांक 20/08/2021 को प्रकाशित करता है।

(यहां निर्णय/आदेश मुद्रित करें)

[फा. सं. 82/महा.-लो.स./4/2019 (नागपुर)]

आदेश से,

एस. के. दास, सचिव

ORDER

New Delhi, the 9th September, 2022

O.N. 137.— In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission of India hereby publishes the judgment/order dated 20/08/2021 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Election Petition No. 4 of 2019.

(HERE PRINT THE JUDGMENT/ORDER)

[F. No. 82/MT-HP/4/2019 (Nagpur)]

By Order

S. K. DAS, Secy.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH AT NAGPUR**ELECTION PETITION NO. 4/2019**

Baliram s/o Bhagwan Shiraskar, aged 56 years, Occ. Farmer,
r/o Paras, Bailjodi Chauk, Tq. Balapur,
Dist. Akola – 444 103

...PETITIONER

VERSUS

1. The Election Commission of India,
through its Chairman having o/a
Nirvachan Bhavan, Ashoka Bhavan,
New Delhi.
2. Returning Officer, having his
office at Collectorate, Buldhana.
3. Prataprao alias Ganpat Jadhav,
r/o Madani, Tq. Mehkar,
Dist. Buldhana.

...RESPONDENTS

Mr. Nihalsingh Rathod, Advocate for petitioner.

Ms Neerja Choubey, Advocate for respondent No.1.

Mrs.K.R. Joshi, Incharge Government Pleader for respondent No. 2.

Mr. N. B. Kalwaghe, Advocate for respondent No.3.

CORAM:- V. M. DESHPANDE J.**DATE:- AUGUST 20, 2021****JUDGMENT (Per: V. M. Deshpande, J.)**

1. After elections for 17th Lok Sabha were held in April-2019, various election petitions were filed in the High Court.

2. The preset election petition pertains to Lok Sabha election for Buldhana Constituency. The petitioner was sponsored by duly registered political party by name; 'Vanchit Bahujan Aghadi.' In the said election, respondent no.3, who was sponsored by Shiv Sena was declared as returned candidate by the Returning Officer. According to the election petitioner, he polled 1,72,627 votes whereas respondent no.3 polled 5,21,977 votes. Paragraphs 5 and 6 of the petition, which are relevant, read thus:

"5. In the loksabha constituency of Buldhana Lok Sabha 05, there were 19,08,555 registered voters. Of which 11,19,776 polled their votes. Petitioner, according to the respondent no.2 fared 1,72,627 votes, whereas the respondent no.3 sponsored by Shiv Sena fared 5,21,977 votes. However, the final tally of the votes does not match and there is serious discrepancy in the grant total. There is difference of 583 votes in totality between the votes polled and votes counted.

6. In such circumstances, it was mandatory for the respondent no.2 to match the tally between the votes recorded in accordance with form 17C and votes counted. Only after such tally matches without any error, could the respondent no.2 have proceeded further. However, without following the specific orders of respondent no.1, respondent no.2 issued certificate to the respondent no.3, leaving behind serious lacunae which makes the whole election redundant and vitiated."

3. After notices were issued, respondent no.3 appeared and filed an application under Order VII Rule 11 (a) of the Code of Civil Procedure, 1908 read with Section 81 and 83 (1) (a) of the Representation of People Act, 1951 for rejection of this petition. The said application was Civil Application (CAO) No.2024/2019 (Exh.-9). Copy of the said was furnished to the counsel for the petitioner. Roznama of this election petition would show that in spite of time granted, reply was not filed to the application Exh.-9. On 16.07.2021, Mr. Rathod, learned counsel for election petitioner submitted that he was having instructions from the election petitioner that election petitioner does not wish to file any reply to the application, Exh.-9 and accordingly the said was noted in the order dated 16.07.2021 and thereafter the matter was fixed for oral arguments.

4. When on 20.08.2021, the application was taken up for hearing, it was pointed out to this Court, not only by the learned counsel for respondent no.3 but also by learned counsel for the election petitioner that Election Petition Nos.6/2019, 9/2019 and 7/2019 are dismissed by different benches of this Court by allowing applications filed on behalf of the returned candidate under Order 7 Rule 11(a) of the Code of Civil Procedure and Sections 81 and 83 (1) (a) of the Representation of People Act.

5. At the time of hearing of this application, Mr. Rathod, learned counsel for the petitioner submitted that except the number of votes as mentioned in paragraphs 5 and 6 of the election petitions, which were filed by him only, all other pleadings made in all election petitions are identical.

6. Mr. Rathod, learned counsel for the election petitioner also submitted that none of the election petitioners whose election petitions have been dismissed by various benches of this Court by upholding the objections raised by filing application under Order VII Rule 11(a) of the Code of Civil Procedure, none approached before the Hon'ble Apex Court. Mr. Rathod further submitted that the allegations made in this petition since are identical with the other petitions except the votes polled by the petitioner and the returned candidates, he submitted that this election petition also can be disposed of.

7. From the submissions made by both the parties before me, it appears that facts constituting cause of action as contemplated by sub clause (a) of Order VII Rule 11(a) of the Code of Civil Procedure are same. It is undisputed that all other election petitions have been dismissed for non disclosure of cause of action. Therefore, I found myself bound by the reasons, dismissing those other election petitions.

8. In that view of the matter, there is no other option for this Court but to allow application Exh.-9. Consequently, following order is passed.

ORDER

- (i) Civil Application (CAO) No.2024/2019, under Order VII Rule 11(a) of the Code of Civil Procedure read with Section 81 and 83 (1) (a) of the Representation of People Act (Exh.-9) filed by the returned candidate is hereby allowed.
- (ii) In view of allowing of application Exh.-9, Election Petition No.4/2019 stands dismissed.

JUDGE

Kahale